

REMARKS/ARGUMENTS

The Examiner is requiring restriction to one of the following groups:

Group I: Claims 1-23 and 28-32, drawn to an article and a method of removing makeup using the article, classified in class 424, subclass 443.

Group II: Claims 24-27, drawn to a process of making an article.

Applicants have elected Group I: Claims 1-23 and 28-32, drawn to an article and a method of removing makeup with traverse.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reasons and/or examples to support any conclusion that restriction is proper.

The Office has categorized the relationships between Groups I and II a process of making and product made. Patentable distinctness may be shown if either or both of the following can be shown: (A) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make other and different products; or (B) that the product as claimed can be made by another and materially different process (M.P.E.P. § 806.05(f)). The Office alleges that Group I can be made by a different process such as *impregnating* a substrate with an aqueous composition and drying the impregnated substrate so that the article is free of water.

The Office, however, does not meet the requirements of M.P.E.P. § 806.05(f), since the allegation is not evidence that the claimed article can be made by another and materially different process. In particular, it is noted that the process of present claim 24 includes

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*impregnating* a substrate. Further, it is noted that the Office has not shown or indicated that the alleged aqueous composition would include the claimed (anhydrous) composition, such that the same article would or could be made. As such, the Office's reasoning is merely a restatement of the Office's conclusion that the groups are patentably distinct, which is believed to be improper.

Regarding the species election, Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper there must be a patentable difference between the species, as claimed. M.P.E.P. § 808.01(a). The Examiner, however, merely makes the conclusory statement that the claims are generic, without submitting any reasoning or evidence that addresses the patentable distinctness of the species, such that searching all species would be an undue burden.

Accordingly, for at least the reasons presented above, Applicants submit that the Examiner has failed to meet the burden necessary to sustain the restriction requirement. Withdrawal of the requirement is respectfully requested.

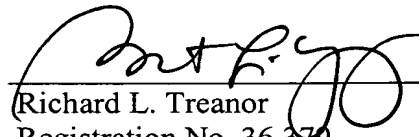
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